

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Case No. 2:09-CR-262 JCM (GWF)

Plaintiff(s),

ORDER

V.

ADRIAN FUENTES-GARCIA, et al.,

Defendant(s).

Presently before the court is *United States v. Rivera-Avalos, et al.*, case number 2:09-cr-00262-JCM-GWF.

On December 19, 2014, defendant Adrian Fuentes-Garcia filed a *pro se* motion for sentence reduction. (Doc. # 351). At the time of defendant's motion he was represented by counsel Todd Leventhal, Esq.

18 The court granted defendant's motion for sentence reduction on February 26, 2015. (Doc.
19 # 355). Under the protocol for discretionary sentence reductions based on guideline amendment
20 782, when a request motion for sentence reduction is filed, the court orders a federal public
21 defender to be appointed as counsel to represent the defendant moving for sentence reduction.
22 When the court granted defendant's *pro se* motion for sentence reduction, Mr. Leventhal was
23 automatically removed as counsel.

Defendant is currently scheduled to appear before this court on May 14, 2015, for an evidentiary hearing regarding defendant's 28 U.S.C. § 2255 motion to vacate sentence. Mr. Leventhal, in preparing for the hearing, noticed his removal from the case.

Defendant has shown no desire to remove Mr. Leventhal as counsel. The court believes that defendant did not mean to remove Mr. Leventhal when defendant filed the improper *pro se* motion for sentence reduction.

Pursuant to Local Rule IA 10-6(a), “[a] party who has appeared by attorney cannot while so represented appear or act in the case. An attorney who has appeared for a party shall be recognized by the Court and all parties as having control of the client’s case.”

The court finds it appropriate to vacate its February 26, 2015, order appointing a federal public defender based on defendant's *pro se* motion for sentence reduction. (Doc. # 355). Mr. Leventhal will be reinstated as counsel for defendant Adrian Fuentes-Garcia.

Further, Mr. Leventhal is advised to inform his client that his attorney must file motions in compliance with Local Rule IA 10-6(a). The court will deny defendant's improperly filed *pro se* motion for sentence reduction (doc. # 351) without prejudice. Defendant may refile his motion for reduction of sentence, through his attorney, in compliance with Local Rule IA 10-6(a).

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the court's order appointing a federal public defender based on defendant's *pro se* motion for sentence reduction (doc. # 355) be, and the same hereby is, VACATED. Mr. Leventhal shall be reinstated as counsel for defendant Adrian Fuentes-Garcia.

IT IS FURTHER ORDERED that defendant's improperly filed *pro se* motion for sentence reduction (doc. # 351) be, and the same hereby is, DENIED without prejudice.

DATED April 24, 2015.

Xem C. Mahan
UNITED STATES DISTRICT JUDGE